2700.

SUPREME COURT OF THE UNITED STATES.

No. 65.

JOHN McGAVOCK, PL'FF IN ER.,

vs.

PETER W. WOODLIEF.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE EASTERN DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Petition	1	1
Answer	4	2
Submission of cause	4	3
Opinion of the court	5	3
Judgment	9	6
Motion for new trial	9	6
Grounds for new trial	11	6
Opinion of the court on application for new trial	12	7
Judgment on rule for new trial	14	9
Petition for writ of error	15	9
Order allowing writ of error	15	10
Bond for writ of error	17	10
Order for filing statement of facts	18	11
Statement of facts	19	11
Clerk's certificate to transcript	23	14
Writ of error	24	14
Citation and service	25	15

CIRCUIT COURT OF THE UNITED STATES,
Fifth Circuit and Eastern District of Louisiana.

TRANSCRIPT.

PETER W. WOODLIEF
vs.
JOHN MCGAVOCK. } No. 2568.

Petition.—Filed 29th Dec'r, 1855.

U. S. CIRCUIT COURT.

PETER W. WOODLIEF
vs.
JOHN MCGAVOCK.

To the honorable the judges of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana:

The petition of Peter W. Woodlief, who resides in the city of New Orleans, and is a citizen of the State of Louisiana, respectfully represents, that John McGavock, who is a citizen of the State of Tennessee, is justly and legally indebted unto your petitioner in in the full sum of twenty-six hundred dollars, for this, to wit:

That your petitioner is now, and has for upwards of a year past been, engaged in business as a broker in the city of New Orleans, and as such has been constantly employed in procuring purchases and sales for moveable and immovable property, and in this business is well established and known.

That on or about the 16th November, 1855, the said John McGavock employed your petitioner, as a broker aforesaid, to procure for him the said John McGavock, a purchaser for his, the said John McGavock's, sugar plantation, situated on the Bayou Lafourche, in the parish of Terreboune, in the State of Louisiana, and seventy slaves belonging to said plantation; the said John McGavock then and there giving petitioner instructions, as a broker, to find a purchaser for the said plantation and slaves, for the price of one hundred and thirty thousand dollars, of which twenty thousand dollars was to be payable in cash, and the remainder in five equal annual instalments without interest.

That under this employment, and in pursuance of *of* these instructions, your petitioner, as a broker, made diligent pursuit and inquiry, and by means of his skill, labor, and industry, as well as of the great amount of knowledge he possessed of the market and the conditions of dealing for real estate and slaves, and also of his general acquaintance with those persons who were likely or desired

to invest their capital in plantations and slaves, he soon found a good and bona fide purchaser, to wit, one George M. Long, who resides in the parish of Carroll, in the State of Louisiana, to whom, on or about the day of the month of November, 1855, he offered the said plantation and slaves, and solicited him, the said George M. Long, to become the purchaser of the aforesaid plantation and slaves of John McGavock, and then and there communicated to him, the said George M. Long, the price and terms on which the said John McGavock was willing to sell the said plantation and slaves, all as above set forth, whereupon the said George M. Long declared that he would examine the said property, and, if it suited him, would purchase the same. That accordingly, on or about the twentieth day of November, 1855, your petitioner and the said George M. Long went together to the said plantation of John McGavock, where your petitioner introduced the said George M. Long to the acquaintance of the said John McGavock, as a person who had come to look at the plantation and slaves, and as being desirous of purchasing the same. That the said John McGavock and the said George M. Long then went over and examined the property together, and then and there concluded an agreement of purchase and sale—the said John McGavock agreeing to sell to the said George M. Long the said plantation and slaves for the price and on the terms at which he had directed your petitioner to find a purchaser, viz, one hundred and thirty thousand dollars, of which twenty thousand dollars was to be paid in cash, and the remainder in five equal annual instalments, without interest.

And your petitioner further shows that he fully performed the service for which he was employed by the said John McGavock, in finding him a purchaser for his plantation and slaves, and that, by the usage and custom here in New Orleans, he is entitled to a commission or brokerage on the price of two per centum, and that his services rendered as above described to the said John McGavock were well worth a compensation at that rate, amounting to the aforesaid sum of twenty-six hundred dollars.

Wherefore your petitioner prays, the premises being considered, the said John McGavock may be cited to appear before this honorable court, and that after due proceedings he may be condemned to pay petitioner the said amount of twenty-six hundred dollars, with legal interest from judicial demand, and for general relief.

(Signed,) S. PIERCE,
" DURANT & HORNOR,
Att'ys for Petitioner.

Answer of John McGavock.—Filed April 29th, 1856.

PETER W. WOODLIEF
vs.
JOHN MCGAVOCK.

Now comes the said John McGavock, a citizen of the State of

Tennessee, and for answer to the petition of the said plaintiff, denies generally all the allegations therein contained tending to charge defendant as indebted or as in any way liable to said pl'ff in any amount whatever.

And def't prays to be hence dismissed, with costs and general aid and relief in the premises.

(Signed,) BENJAMIN, BRADFORD, & FINNEY,
For Def't.

Minutes.—April term, 1856.

NEW ORLEANS, *Tuesday, 17th June*, 1856.

Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, district judge; absent, Hon. J. A. Campbell, presiding judge.

PETER W. WOODLIEF
vs.
JOHN MCGAVOCK. } 2568.

This cause was taken up for trial by consent of parties, and after argument of counsel was submitted to the court and taken under advisement.

Opinion.—Filed 24th June, 1856.

PETER W. WOODLIEF
vs.
JOHN MCGAVOCK. } No. 2568.

The plaintiff claims of the defendant the sum of $2,600, as a commission which he alleges is due him as broker for having negotiated the sale of a plantation and slaves belonging to defendant, at the price and on the terms stipulated by the latter. A memorandum was taken by the plaintiff of the price of the plantation and slaves, and the terms in which the sale was to be effected. The memorandum is in the handwriting of the plaintiff, but it is satisfactorily shown to contain a correct statement of the price and terms as fixed by the defendant. The testimony of Long is full and explicit upon this point, as well as upon others which it will become important to notice. This witness agreed to become the purchaser of the property. His testimony has been strongly objected to by the counsel of the defendant, but I am unable to see upon what ground an objection can be urged either to his competency or credibility. He may have been disappointed in not having completed a good purchase, but in his present position he is disinterested, and there is nothing in his evidence either contradictory or improbable.

It is well settled in our jurisprudence that either party to an

agreement may recant before that agreement is signed. I allude, of course, to such agreements and contracts as our law requires to be in writing. On behalf of the plaintiff, it is contended that the evidence shows that a distinct agreement was formed between the defendant and George M. Long, in regard to the sale and purchase of the plantation belonging to the latter, situate on the Lafourche. Before the act of sale was passed before a notary, the defendant withdrew from the agreement, and refused and still continues to refuse to sign any act of sale for the final transfer of the property.

This, under our law, he had a right to do, and there is no remedy left to Long to compel him to make the transfer. But a different question is presented when we come to consider the contract between the plaintiff as the broker, and the defendant who employed him to sell the property. All that the broker can do is to negotiate the sale; to render the terms of sale agreeable and satisfactory to both parties; to bring their minds to a concurrence as to the consideration and terms of the contract. When this has been accomplished, his duty and services are at an end. He cannot compel his employer to execute the contract of sale, but he can compel him to compensate him for his services. With the whims or caprices, or the insufficient reasons, which may induce a party who has asked and obtained the services of a broker to withdraw from an agreement, the latter can certainly have nothing to do.

I am satisfied from the evidence that the defendant and G. M. Long came to distinct understanding and agreement in the presence of the plaintiff that the purchase of the property could be made for the sum of $130,000, of which $20,000 were payable in cash, and the remainder was to be paid in five equal annual instalments, without interest. I am satisfied that such was the price and such the terms of payment originally stipulated by the defendant, when the plaintiff, as the broker, made the memorandum introduced into evidence.

A great deal of testimony has been introduced which has no legal bearing upon the merits of this controversy. It is quite immaterial what conversations may have taken place between the defendant and the commercial house of Cammack, Squires, & West, out of the presence of G. M. Long, or out of the presence of plaintiff. It is equally immaterial what may have been the loose conversations of the plaintiff with the witness Nelson, in the railroad cars, in regard to the interest which the former had or was to have in the plantation and slaves after the sale and purchase had been finally agreed upon by the defendant and G. M. Long. These conversations seem to have been of a *trinsil* and facetious character, and no importance can be attached to them. The expressions used by the plaintiff when making inquiries of Thibodaux, though used in a more formal and serious manner, as to his interest in the purchase, cannot be regarded by the court as sufficient to establish the

fact that any such interest really existed. They certainly can have no effect upon the agreement between the defendant and Long, and it is not now seriously contended that any portion of the price of the property was to be paid by the plaintiff. It is clear that he acted as the broker, and his interest in the transaction extended no further than the usual commission to which a successful negotiation would entitle him. The negotiation was successful; the price and terms were clearly agreed upon; and nothing was wanting but the act of sale before the notary. With this last act the broker could have nothing to do. His services were at an end when he brought the parties to an agreement. The defendant has shown no sufficient ground for refusing to sign the act. The fact that the consideration was to be paid by means which were entirely and exclusively the property of Mrs. Long, is quite immaterial when it is shown that these means would have been used with the full consent of Mrs. Long herself.

It is impossible, in view of the evidence, to perceive how the situation of the defendant could be changed by passing the title of the property to the wife instead of the husband. The obligations of Dr. Bard were relied upon to pay the price, and it is shown that these obligations would have been used whether the sale were passed in the name of Long or his wife. It is furthermore shown that these obligations were sufficient to ensure the prompt payment of the consideration for which the purchase was made.

The reasoning of the supreme court of this State, in the case of Gottschalk vs. Jennings, (1 Annual, 67,) goes far to establish the claim of the plaintiff to his commission. "The general rule of law as to commissions," say the court, "is, that the whole service or duty must be performed before the right to any commission attaches; for the agent must complete the thing required of him before he is entitled to charge for it. But cases may occur in which an agent may be entitled to a remuneration for his services in proportion to what he has done, although he has not completed the business.—Story on Agency, 338. Here the entire performance by plaintiff was prevented by the act of the defendant."

The amount of commission charged by the plaintiff is shown to be correct by the testimony of experienced brokers; and it is also shown by the same witnesses that the seller of property in a case like the present is the party who pays the commission. Some of the witnesses state that if the purchaser should employ the broker, then, in that case, he would also be required to pay the commission. In the present case, however, the defendant employed the broker, and he is therefore liable for the commission.

It is therefore ordered, adjudged, and decreed, that the plaintiff recover from the defendant the snm of twenty-six hundred dollars, as claimed in the petition, together with the costs of suit.

Judgment.

April term, 1856.

TUESDAY, 24*th June*, 1856.

Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, district judge; absent, Hon. J. A. Campbell, presiding judge.

PETER W. WOODLIEF
vs.
JOHN MCGAVOCK. } 2568.

This cause having been argued and submitted on a former day, and the court having considered the same, this day delivered its opinion in writing, and in conformity thereto doth now order, adjudge, and decree that the plaintiff, Peter W. Woodlief, do have and recover judgment against the defendant, John McGavock, for the sum of twenty-six hundred dollars, with interest thereon at the rate of five per cent. per annum from 18th January, 1856, until paid, and costs of suit.

Judgment rendered 24 June, 1856.

Judgment signed 9th October, 1856.

(Signed,) THEO. H. McCALEB,
U. S. Judge.

Motion for new trial.

Minutes.—April term, 1856.

NEW ORLEANS, *Friday*, 27*th June*, 1856.

Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, district judge; absent, Hon. J. A. Campbell, presiding judge.

PETER W. WOODLIEF
vs.
JOHN MCGAVOCK.

E. A. Bradford, esq., of counsel for the defendant, John McGavock, this day moved the court for a new trial in this cause on the grounds this day filed.

Grounds for new trial.—Filed 27th June, 1856.

U. S. CIRCUIT COURT:

P. W. WOODLIEF
vs.
JOHN MCGAVOCK.

1st. That the said judgment is contrary to law and evidence; and particularly,

2d. That the evidence does not establish that the said pl'ff was ever employed by the said def't as a broker to procure a purchaser for said plantation.

3d. That no contract for the sale of said plantation, as alleged, is established by the proof, but, on the contrary, the agreement was shown to be conditional, and dependent upon a condition which has not and could not have been complied with.

4th. That the alleged purchaser was not good and solvent, as alleged, but wholly worthless and irresponsible, and totally unable to carry out any contract for the purchase of the plantation referred to.

5th. That an alleged contract by the husband could not be assumed by the wife without the consent of the vendor, and no assent of the wife is proved to have been notified even to the defendant.

NEW ORLEANS, *June 27th*, 1856.

We accept service of the above rule and grounds.

(Signed,) DURANT & HORNOR,
Att'ys for Pl'ff.

Opinion on application for new trial.—Filed 9th Oct., 1856.

U. S. CIRCUIT COURT.

P. W. WOODLIEF
vs.
McGAVOCK.

This case has been attentively reconsidered upon the elaborate and able brief presented by the counsel of the defendant in support of their application for a new trial. I am unable, however, to discover wherein the judgment of the court is erroneous. The argument of the counsel is not based upon what may properly be regarded as legitimate inferences to be drawn from the evidence in the record. The reasons adduced by the counsel to show why the defendant refused to comply with the terms of the sale were not, it seems, urged by the defendant himself before the institution of this suit. It is very remarkable that neither the purchaser of the property nor the plaintiff, as broker, was ever made acquainted with those reasons. There is certainly no evidence to show that the defendant ever put Long in default, and how can this court say that Long was unable to comply with his contract? The notice sent by the notary, at the request of the latter, that he was ready to comply, received no answer, and the court is left utterly in the dark in reference to the real grounds of the silence which it pleased the defendant to obeerve. I see no difficulty, on his part, in coming candidly forward and stating his apprehensions, if he had any,

that the purchaser was unable to comply with his contract. The court may decide, and has decided, that the notes of Dr. Bard were to be mainly the consideration of the purchase, but if the testimony of Long is to be believed, they were not the only means which he expected to use. If Long and wife could give notes of so unexceptionable a character as those of Dr. Bard, for so large a sum as $80,000, the fair presumption is that they could have furnished the necessary security for the balance, to be paid in instalments according to the contract. At all events, the court cannot be called upon to presume that they were unable to execute an agreement so solemnly formed, when no steps to put Long in delay were taken by the defendant.

I am still clearly of the opinion, that so far as the broker is concerned, he did his duty. The contract, through his exertions and services, was fully and definitely made. Both minds met; and he is certainly not responsible for the withdrawal of the defendant from the agreement, when no reasons for doing so have been formally and promerly adduced.

The court is unable to discover any difference between this case and that of Emerling vs. Allain, decided in 1851. In that case, one of the learned counsel of the defendant in this suit appeared for the plaintiff, and his clear and cogent argument left no doubt to the mind of the court that his client was entitled to his commission as broker, although no sale of the plantation actually took place.

Much has been said upon the subject of the relations which exist between Long and his wife, and an advertisement in the Picayune newspaper has been introduced to show that the notes of Dr. Bard were the property of the wife, and that the husband was not authorized to use them. And the court is called upon to consider this as one of the reasons and as an insuperable one why Long could not comply with his contract. If any real difficulty ever existed on this subject, the evidence shows that it was speedily obviated by the consent of the wife that the notes in question should be given in payment of the price of the plantation. It is true, she required that the title to the property should be passed to her ; but as the husband would also become bound with her for the payment of the balance of the price, it is difficult to perceive how the rights of the seller could be injuriously afiected by this change in the act of sale.

The court has considered this point, because it was urged with zeal by the counsel of the defendant. But it does not appear that it was ever suggested as a ground of difficulty by the defendant before the institution of this suit. It certainly does not appear that he ever, in any form, urged it as a difficulty, either to Long or the plaintiff in this cause. Without any formal measures having been taken to test the ability of Long to comply with his contract, the court is called upon to presume everything against him, and nothing in his favor. On the other hand, while McGavock remains

perfectly silent and quiescent when a formal demand is made upon him to execute his contract, the court is virtually called upon to presume everything in his favor, and nothing against him.

This case is, fortunately, one which will enable the defendant to take an appeal, and a higher court will speedily correct any error that may have been committed in the judgment already rendered.

The new trial is refused.

Judgment on rule for new trial.

Minutes.—Special session.

NEW ORLEANS, *Thursday 9th October*, 1856.

Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, district judge; absent, Hon. J. A. Campbell, presiding judge.

PETER W. WOODLIEF
vs.
JOHN MCGAVOCK. } 2568.

The court having considered the application herein made on the 27th June last by the defendant for a new trial, and which was, by consent of parties, submitted on brief, this day delivered its opinion in writing, and in conformity thereto, doth order that the application be dismissed, and the new trial refused.

Petition for writ of error.—Filed 16th October, 1856.

U. S. CIRCUIT COURT,
For the Eastern District of Louisiana:

P. W. WOODLIEF
vs.
JOHN MCGAVOCK.

The defendant, John McGavock, respectfully represents, that he is advised that there is error to his prejudice in the final judgment herein rendered against him, and in favor of the plaintiff, on the 9th of June last, and signed on the 9th of October current, and that he is desirous to take a writ of error to the Supreme Court of the United States, to have the same revised by that tribunal, and that the said writ should operate as a supersedeas.

Wherefore the said defendant prays that a writ of error be granted him, to carry up said judgment before the Supreme Court of the United States, and to operate as a supersedeas, upon his giving bond in favor of the plaintiff and according to law, and for an amount to be fixed by your honor, and conditioned as the law requires; that citations in error may issue, and such proceedings be

had in the premises as the law requires, and for general equitable relief.

(Signed,) BENJAMIN, BRADFORD, & FINNEY,
Att'ys.

Order allowing writ of error.

Minutes.—Special session.

NEW ORLEANS, *Thursday*, 16*th October*, 1856.

Present, Hon. Theo. H. McCaleb, district judge: absent, Hon. J. A. Campbell, presiding judge.

PETER W. WOODLIEF
vs.
JOHN MCGAVOCK. } 2568.

On motion of John Finney, esq., of counsel for the defendant, and on filing petition on behalf of said defendant, setting forth that he is aggrieved by the judgment herein rendered against him, and praying a writ of error therefrom to the Supreme Court of the United States, the same to operate as a supersedeas, it is ordered that said writ issue as prayed for, returnable to the next term of the Supreme Court of the United States, on defendant's giving bond, conditioned according to law, in the penal sum of five thousand dollars, with good and solvent security thereon.

Bond for writ of error.—Filed 16th October, 1856.

Know all men by these presents, that we, John McGavock, as principal, and Cammack, Squires, & West, as sureties, are held and firmly bound unto Peter W. Woodlief, in the full and just sum of five thousand dollars, to be paid to the said Peter W. Woodlief, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty-six.

Whereas, lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the eastern district of Louisiana, in a suit depending in said circuit court, wherein the said Peter W. Woodlief was plaintiff and the said John McGavock was defendant, judgment was rendered against the said John McGavock; and the said John McGavock having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Peter W. Woodlief, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said John McGavock shall prosecute the said writ to effect, and pay or satisfy such judgment as may be rendered on the said writ of error, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

JOHN McGAVOCK, [SEAL.]
Pr. BENJAMIN, BRADFORD, & FINNEY, [SEAL.]
Att'ys at Law.
CAMMACK, SQUIRES, & WEST, [SEAL.]
By GEO. W. WEST.
Sealed and delivered in presence of—
Attest: R. W. GURLEY.

(Endorsed:) Approved.
(Signed,) THEO. H. McCALEB,
U. S. Judge.

Order for filing statement of facts.

Minutes.—November term, 1856.

NEW ORLEANS, *Monday*, 17*th November*, 1856.

Court met, pursuant to adjournment. Presiding, Hon. Theo. H. McCaleb, district judge; absent, Hon. J. A. Campbell, presiding judge.

P. W. WOODLIEF
vs. } 2568.
JOHN McGAVOCK.

The court this day drew up a statement of facts in this case, and ordered that it be filed, nunc pro tunc, as of 24th June, 1856.

Statement of facts.

Filed by order of court this 17th Nov'r, 1856, nunc pro tunc, as of 24th June, 1856.

U. S. CIRCUIT COURT:

P. W. WOODLIEF
vs.
JOHN McGAVOCK.

This cause was argued at length by the counsel of the respective parties, and submitted for the decision of the court (the jury having been waived) upon the pleadings, documentary proofs on file, and the depositions of witnesses which were read on the trial.

Thereupon the court finds: That the plaintiff was employed by the defendant to obtain a purchaser of his plantation and slaves on the Bayou Lafourche, in this State, at a stipulated price, to wit, the sum of $130,000, the sum of $20,000 to be paid in cash, and the balance in 1, 2, 3, 4, and 5 years, in instalments without interest. The growing crop was not included in the terms above specified; but, by a subsequent arrangement between George M. Long, who agreed to give the price stipulated, and John McGavock, the defendant, the former agreed to give for it the sum of $13,500, to be paid as the crop was sold.

The court finds, further, that the consideration of the plantation was to be paid mainly in notes executed by a Dr. Bard, and by him given in payment of the price of the Largwood plantation; that these notes were the property of Mrs. Long, the wife of George M. Long; and that although she at first refused to permit the notes in question to be used in the purchase of the plantation and slaves from McGavock, she afterwards consented that they should be so used, upon condition that the sale of the plantation and slaves should be made to her. She expressly declared, in writing, that having been informed that her husband, George M. Long, had left the city that morning, December 6th, 1855, and presuming he had gone to Mr. John McGavock, in Terrebonne, about a certain purchase which had been made through P. W. Woodlief, broker, she thereby authorized and empowered the said Woodlief, with the authorization of her husband, to consummate the said purchase as had been made by her husband conjointly with P. W. Woodlief, having charge of the sale of said property. And she further authorized said Woodlief to close the purchase, provided the property should stand in her name, with the authorization of her husband. She furthermore bound herself to fulfil the contract to the satisfaction of the vendor, John McGavock.

The court furthermore finds that Long, individually, owned no property, or, if he did, that it stood in the name of his wife, and that he had little credit. His credit was not good, according to the opinion of Thornhill & Co., who had transacted the business of Mrs. Long as her commission merchants. The evidence of the member of this firm on this subject was objected to by the counsel for the plaintiff. The court received it as evidence of the fact that Long had no property in his own name, and but little credit. But the court finds that the means relied on by Long to make the purchase of the plantation and slaves were to be used for that purpose, with the full assent of his wife, whose ability to fulfil the contract made by her husband is amply shown by the testimony of Chaplain, a member of the firm of Thornhill & Co.

The court finds that it was in the contemplation of the purchaser and of the seller that the notes of Dr. Bard should be substituted in the place of those which had been given by McGavock to Thibodaux in payment of the price of the plantation when he, McGa-

vock, purchased it from Thibodaux; that Thibodaux was willing to receive the notes of Bard in lieu of those given by McGavock, if the substitution could take place legally, and he could retain a first mortgage on the plantation and slaves; that several of the notes given by McGavock to Thibodaux, to wit, $40,000, had been endorsed by the commercial firm of Cammack, Squires, and West, and that $20,000 of those notes had been taken up, leaving the said firm still endorsers to the amount of $20,000; that an application was made by the plaintiff, Woodlief, and by Long, to the said firm to substitute the notes of Dr. Bard for those on which the said firm were endorsers, but that no satisfactory answer was received. The application was made through Wm. Christy, the notary before whom the act of sale of the plantation and slaves was to be passed. The court finds that according to the testimony of West, of the firm of Cammack, Squires, & West, said firms were interested in $20,000 only of the notes given by McGavock to Thibodaux; whereas the testimony of Christy shows that the firm were holders of said notes to the amount of $40,000. So far, therefore, as the testimony of Christy conflicts with that of West, it must be rejected. The notes to the amount of $20,000 had already been taken up, and the fair presumption is that they had been taken up by the money of McGavock, derived from the proceeds of crops from his plantation.

The court finds that no positive objection was made to the substitution of the bond notes in the place of those of McGavock, except so far as related to the $20,000, upon which the firm of Cammack, Squires, & West were endorsers; and the testimony of West, a member of that firm, shows that upon further inquiry concerning Dr. Bard, he became satisfied that he was solvent and punctual. In relation to the notes held by Thibodaux, amounting to between $29 and 30,000, the court is satisfied, from the testimony of Thibodaux himself, that the notes of Dr. Bard would have been received in lieu of those given by McGavock, by securing the payment thereof by a mortgage. The court, therefore, sees no reason to doubt that Long and wife would have been prepared to comply with the terms of the contract, by meeting the wishes of McGavock in regard to the notes given by him when he purchased the plantation from Thibodaux, even if they were required to pay cash the amount for which Cammack, Squires, & West were endorsers, by having discounted a portion of Dr. Bard's obligations.

The court decides that the testimony of Nelson and Thibodaux is entirely insufficient to show that Woodlief, the plaintiff, had any other interest in negotiating the sale than such as arose from his position as a broker.

The court finds that McGavock, the defendant, employed the plaintiff as a broker to sell his plantation and slaves; that the plaintiff, in accordance with a memorandum made at the time he was so employed, found a person willing to become the purchaser, on the

terms stipulated in the said memorandum; that the said person and the defendant came to a distinct understanding and agreement in regard to those terms in the presence of plaintiff, acting as broker; that the person in question (G. M. Long) was distinctly told by the defendant that he (def't) would come to the city and pass the sale before the notary designated to prepare the title; that he did not come in accordance with his promise; that upon being notified by Long and the notary that he (Long) was prepared to comply with his contract, and that it was his (the defendant's) duty to come down and furnish the necessary memorandum of the plantation and slaves, to enable the notary to make out the act of sale, he, the defendant, remained perfectly silent—failed to furnish the required memorandum, failed to make the sale, and gave no reasons for his conduct either to Long or to the plaintiff.

The court finds further, that the usual commissions charged by brokers for effecting the sale of sugar plantations and slaves is two per centum on the price, and that the seller pays this commission to the broker, unless there should be an agreement to the contrary.

It is the opinion of the court that the plaintiff is entitled to recover from the defendant the sum of twenty-six hundred dollars, with interest at 5 per cent. from judicial demand, and costs.

UNITED STATES OF AMERICA,
Circuit Court of the United States.

Fifth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I, John W. Gurley, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 23 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had in the case of Peter W. Woodlief vs. John McGavock, No. 2568 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New [L. S.] Orleans, this 24th day of November, A. D. 1856.

J. W. GURLEY,
Clerk.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before

you, or one of you, between Peter W. Woodlief and John McGavock, a manifest error hath happened, to the great damage of the said John McGavock, as by his complaint appears;

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this sixteenth of October, in the year of our Lord one thousand eight hundred and fifty-six.

J. W. GURLEY,
Clerk of the United States Circuit Court
for Eastern District of Louisiana.

THE UNITED STATES OF AMERICA:

The President of the United States to Peter W. Woodlief, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein John McGavock is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this sixteenth day of October, in the year of our Lord one thousand eight hundred and fifty-six.

THEO. H. McCALEB,
U. S. Judge.

[Endorsed:] United States circuit court, No. 2568. Peter W. Woodlief vs. John McGavock. Citation in error.

Marshal's return.

Rece'd Oct. 16th, 1856, and on the same day served copy of the within citation in error on Peter W. Woodlief in person, in the city of New Orleans, and returned Oct. 10th, '56.

E. MARY, *D'y M.*